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UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Adjustment Administration
Washington, D. C.

March 30, 1940.

To All Administrative Officers and State Committeemen,
Agricultural Adjustment Administration,
Southern Region:



Re: Involuntary sales.

At the time the Regulations Pertaining to Cotton Marketing Quotas for the 1938-39 Marketing Year were prepared the Department took the position that involuntary sales of cotton, such as judicial or execution sales, did not constitute a "marketing" of cotton within the meaning of that term as used in the Agricultural Adjustment Act of 1938, as amended. Under this view, where cotton in the hands of the producer, which, if marketed, would be subject to penalty, is levied upon and sold pursuant to order of a court to satisfy the debts of the producer, such sale, being involuntary, would not be treated as a marketing of cotton within the purview of the Act and the producer would not be liable for the payment of any penalty with respect to such cotton nor would the purchaser be liable for the collection thereof. Since that time a specific case has been reported to this Division necessitating a full reconsideration of the subject of involuntary sales in the light of the purposes of the Act and it has been determined that such sales constitute a marketing within the meaning of the Act.

The Act purports to deter the movement of excessive supplies in the channels of commerce by means of penalizing the marketing of cotton by each farmer in excess of his share of that amount of cotton which it is determined in accordance with the standards set out in the Act may be marketed so as to procure the most beneficial results to interstate and foreign commerce and to both producers and consumers of cotton. Cotton sold at execution sales moved into the stream of commerce just as cotton sold at private sales in the normal course of trade. If an execution sale did not constitute a marketing within the meaning of the Act, producers having cotton subject to penalty would then have an incentive to induce their creditors to levy on the cotton and have it sold, for in so doing the producers could avoid liability for the penalties. The undesirable effect would be to place a premium on execution sales as compared with private sales. For these reasons, together with the fact that the purchaser at an execution sale derives title to the cotton immediately from the debtor-producer without intervention of the officer or person conducting the sale, who

never becomes the owner or proprietor of the cotton, an involuntary sale constitutes a marketing within the meaning of the Act and the regulations pertaining to marketing quotas.

In all cases of involuntary sales of cotton the producer is liable for the payment of any penalty incurred, and the purchaser is liable for the collection of such penalty. The cotton so marketed should be identified as being subject or not subject to penalty, as the case may be, by the officer or person conducting the sale presenting the producer's marketing card. If the cotton is not so identified, it is to be deemed subject to penalty and the purchaser is liable for the collection of the penalty. The officer or person conducting the sale will not be liable either for the penalty or the collection thereof. The penalty, when collected, will be credited on the farm account to the producer of the cotton as in cases of penalties collected in connection with private sales.

Very truly yours,

I. W. Duggan

I. W. Duggan,
Director, Southern Division.

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UNITED STATES DEPARTMENT OF AGRICULTURE
 Agricultural Adjustment Administration
 Washington, D. C.

April 27, 1940

To All Administrative Officers and State Committeemen,
 Agricultural Adjustment Administration,
 Southern Region:

Re: Indebtedness of producers entitled
 to refund of cotton marketing quota
 collections.

Cases have been brought to the attention of this Division where Standard Form 1047 has been prepared in connection with a refund of marketing quota penalties collected from a producer who is shown on the register of indebtedness as being indebted to the United States.

A debtor has the right to tender funds in payment of an obligation and specify that such funds be applied to a particular debt. The situation under which penalties are paid is analogous. The producer in effect tenders funds himself or through the buyer of the cotton in payment only of penalties incurred during the marketing year with the understanding that any excess is to be returned to him. Under these circumstances and in fairness to the producer, the excess ought to be refunded to him.

The situation differs from a case where a producer entitled to an agricultural conservation payment is indebted to the United States. In this situation the producer has made no tender of funds belonging to him. The extent of his right against the Government is to collect the amount the Government owes him for participation in the program less the amount which he owes the United States. In this type of case no money has been received from the producer and consequently there is nothing which the Government is obligated to return to him.

In view of the above, Standard Forms 1047 prepared in connection with refunds of collections of marketing quota penalties will be certified for payment without regard to whether the persons shown thereon are indebted to the United States.

Amounts due the United States by a producer making claim for refund on form Cotton 229 will be set off against the amount claimed since by the execution of the claim the claimant impliedly agrees to the set-off. The form contains a statement in the "Certificate of the State Committee" that the claimant is not reported as indebted except as set forth on an attached statement. Also, the claimant certifies that there is no ground for offsetting against the refund any penalty due the United States in connection with the marketing of any commodity other than cotton. The effect of this certification is that the claimant warrants that he does not owe penalties incurred with respect to other commodities, and considering this certification together with the statement contained in the "Certificate of the State Committee" the implication is that the claimant understands that the amount claimed may be applied to the liquidation of debts which he owes the United States, if any.

I. W. Duggan

I. W. Duggan,
Director, Southern Division.